

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

DANIEL HILL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.: 2:07-cv-82
	)	
CHASE BANK USA, N.A.,	)	
	)	
Defendant.	)	
	)	

**MOTION TO DISMISS**

Comes now the Defendant, Chase Bank USA, N.A. ("CHASE"), by counsel, pursuant to Fed. R. Civ. P. 12(b)(6) and moves to dismiss Count I of Plaintiff, Daniel Hill's ("HILL"), Second Amended Class Action Complaint as to the violation of the Fair Credit Billing Act ("FCBA"), 15 U.S.C. §1666 and Regulation Z, 12 C.F.R. § 226.13 and Count III of the Second Amended Class Action Complaint as to the Federal Arbitration Act ("FAA"), 9 U.S.C. §10 request to vacate the arbitration award as the facts fail to state claims upon which relief can be granted.

HILL's claims under the FCBA must be dismissed as the letters of January 8, 2006 and April 4, 2006 upon which he relies do not address "billing errors" as defined under FCBA or Regulation Z, are not "notices of billing error" and were not timely sent under FCBA or Regulation Z. Additionally, the suit filed on February 20, 2006 was not timely filed under FCBA, 15 U.S.C. 1640 as to the purported written notice of billing error, which at any rate was not even pleaded until the August 2007 First Amended Class Action Complaint. By the time

this

subsequent pleading was filed, any FCBA claim related to the January 2006 correspondence was unquestionably time barred.

HILL's statutory claim under the FAA--to vacate the arbitration award because the arbitrator "exceeded his authority" must be dismissed as the award was entered on January 16, 2006 and his Second Amended Class Action Complaint was not filed until November 28, 2007. Even the First Amended Class Action Complaint originally articulating the grounds filed August 8, 2007 is untimely under 9 U.S.C. §. 12 of FAA. The original complaint filed in February 2007 only raises the alleged nonexistence of an arbitration agreement between HILL and CHASE, which is not one of the bases for vacating an award under Section 10 and cannot save the challenges that were not timely brought. HILL's claims under Section 10 should be stricken from Count III.

Wherefore, Defendant, Chase Bank USA, N.A., respectfully requests the Court to dismiss Count I, Fair Credit Billing Act claims and the statutory claims under the Federal Arbitration Act in Count III of Plaintiff, Daniel Hill's, Second Amended Class Action Complaint for the

failure to state claims upon which relief can be granted and for all other proper relief in the premises.

Respectfully submitted,

/s/ Kathryn D. Schmidt

Kathryn D. Schmidt, Attorney No.1516-56  
Attorney for Defendant, Chase Bank  
USA, N.A.

Burke Costanza & Cuppy LLP  
9191 Broadway  
Merrillville, IN 46410  
(219) 769-1313  
schmidt@bcclegal.com

**CERTIFICATE OF SERVICE**

I certify that on the 10<sup>th</sup> day of December, 2007, service of a true complete copy of the foregoing pleading or paper was made upon the following party or attorney of record electronically:

**Lance A. Raphael, 180 W. Washington, Suite 700, Chicago, IL 60602**

**[lance@caclawyers.com](mailto:lance@caclawyers.com)**

**Jennifer Weller, Hinshaw Culbertson, 222 North LaSalle, Suite 300, Chicago, IL 60601**

**[jweller@hinshawlaw.com](mailto:jweller@hinshawlaw.com)**

BURKE COSTANZA & CUPPY LLP

/s/ Kathryn D. Schmidt